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No. 82-936.

In the
Supreme Court of the United States.

OCTOBER TERM, 1982.

FREDERICK C. LANGONE,
MADELINE G. SARNO, VICTOR GRILLO,
LOUIS FERRETTI, GAIL A. FASANO,
THE LANGONE FOR LIEUTENANT GOVERNOR
COMMITTEE, AND FRANCIS X. BELLOTTI,
APPELLANTS,

v.

MICHAEL J. CONNOLLY,
AS HE IS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS,
DEMOCRATIC STATE COMMITTEE,
SAMUEL ROTONDI, JOHN F. KERRY,
LOIS PINES, AND EVELYN MURPHY,
APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COUNTY OF SUFFOLK
COMMONWEALTH OF MASSACHUSETTS.

Appellants' Brief Opposing Motion to Dismiss of Appellee, Democratic State Committee.

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STATEMENT OF FACTS

The appellee Democratic State Committee has brought certain facts to this Court's attention in its Motion to Dismis. The appellants present here a more complete statement of facts relevant to the appellee's motion and to the appellants' claim that they were deprived of adequate notice of what the ballot access requirements were.

The facts reveal that from the outset of its consideration of a "percent rule" for gaining ballot access, the State Democratic Party was doubtful that such a rule could be enforced absent enabling legislation. In view of this uncertainty, it is understandable that appellants were left to wonder what ballot access requirements would be imposed in the 1982 state primary election.

In February of 1977, then-Chairman of the Democratic State Committee Charles F. Flaherty appointed a Charter Commission to draft a proposed charter for the Democratic Party. That Commission had before it, among other recommendations, the suggestion that the Democratic Party should adopt a preprimary endorsing convention. Such a convention, it was suggested, should incorporate a provision by which only candidates who received 20 percent of the convention vote could challenge the convention endorsee in a primary. The system envisioned by the Commission, and by those recommending it, would be modeled after those of Connecticut and New Mexico. The Commission was aware, however, that Connecticut provided for nomination by convention and that Connecticut's election laws mandated no primary but pro-

vided for one only in the event of a candidate challenging the party endorsee consistent with a statutory 20 percent rule. Conn. Gen. Stats., §9-383-400. Connecticut statutes required that an endorsing convention be held and regulated said convention in detail. Id. The Commission also knew that New Mexico statutes provided for preprimary conventions and for a 20 percent requirement in addition to a mandated primary election. New Mexico Stats., c. 1, §§8-38, 8-39.

Recognizing that Massachusetts mandated a state primary, the Commission drafted Article Six, Section III of its charter proposal to provide that those candidates receiving 20 percent or more of the endorsing convention's vote may challenge the convention's endorsee in the primary. Proposed Article Six,

Section III was therefore a hybrid of certain features from Connecticut's and New Mexico's statutory nomination procedures.

The Commission presumably recognized that legislative changes were necessary in order that its proposed "20 percent rule" be implemented. Although the appellee Democratic State Committee is correct in stating at page 34 of its Motion to Dismiss that M.G.L. c. 52, §10, gives it the right to "make rules and regulations, consistent with law, for calling conventions", it is wholly inconsistent with M.G.L. c. 53, §§1 et seq., to assume that M.G.L. c. 52, §10, confers any right on the appellee to set and enforce ballot access requirements not provided by statute. In fact, M.G.L. c. 53, §§1 et seq., exclusively provides what the ballot access requirements shall

be for state primary elections.[1] Appellants properly relied upon M.G.L. c. 53, §§1 et seq., when seeking ballot access for candidate Langone.

M.G.L. c. 53, §2, provides that "candidates of political parties for all elective offices, except presidential elector, shall be nominated ... in primaries or caucuses." The statute con-

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1. It is not possible that the Supreme Judicial Court disposed of the appellants' federal claims on independent and adequate state grounds. The Court may have held as a matter of state statutory construction that M.G.L. c. 53, §§1 et seq., does not intrude upon the rights secured to the state Democratic Party under the Massachusetts Constitution but such a holding would not obviate the necessity of determining the constitutional validity of M.G.L. c. 53, §§1 et seq., or of its application in this instance where appellants and appellees alike have raised federal questions concerning the rights secured to each by the First Amendment and Fourteenth Amendment to the United States Constitution.

tinues and differentiates between candidates of political parties and those of other groups providing that, as to nominations of political parties, "[a]ll nominations and elections in primaries and caucuses shall be by direct plurality vote." Id.

The Legislature, pursuant to its power to supervise elections, has also specified the method by which candidates may secure a position on the primary ballot. M.G.L. c. 53, §44, provides that the "nomination of candidates for nomination at state primaries shall be by nomination papers." In order to be placed upon a primary ballot for the office of Lieutenant Governor, a candidate must file nomination papers signed by at least ten thousand voters. Id. A prospective candidate must also comply with the signature requirements of M.G.L.

c. 53, §46, which requires that the signatures on nomination papers be certified by local registrars of voters; M.G.L. c. 53, §45, which requires that the candidate's written acceptance of the nomination appear on his nomination papers; and M.G.L. c. 53, §48, which requires that the candidate be certified by his local registrar of voters as having been enrolled as a member of the party whose nomination he seeks on or before the ninetieth day prior to the last day provided for filing nomination papers with the State Secretary and that said certificate be filed with the State Secretary on or before the date of filing said papers. This is the complete method, and only method, provided for the nomination of political party candidates; as M.G.L. c. 53, §2, specifically states: "[n]o candidates shall be nominated in

any other manner than is provided in this chapter or chapter fifty-two." Relying upon these statutory provisions, appellants fulfilled all requirements and expected the name of appellant Langone to appear on the ballot.

The charter was proposed as a first credible step in the direction of lobbying for legislative action.

A convention of the Democratic Party was held on May 19, 1979 for the purpose of adopting a charter for the party. That convention was adjourned prior to its consideration of proposed Article Six, Section III and the "20 percent rule".

The Charter Convention reconvened on November 17, 1979 for the purpose of completing action on the remaining articles of the proposed charter. Precisely what was discussed, if anything at

all, on the relation of the charter to state law cannot be determined as the tapes of the November 17, 1979 session no longer exist. The minutes of the session, however, do reflect that Article Six, Section III was voted upon and adopted with the amendment that the 20 percent figure be reduced to 15 percent.

On February 1, 1981, the Democratic State Committee mailed to the chairpersons of various Democratic Town and Ward Committees of Massachusetts a copy of the charter as adopted in 1979 and a letter from its chariman, Chester G. Atkins. This letter was mailed in anticipation of an upcoming April 11, 1981 platform convention and Chairman Atkins emphatically stated therein:

> "Legislation must be passed in order to implement the following portions of the Charter ... Article Six, Section III "Endorsing Conven-

tion" --- entire section ... The legislation necessary to implement these points has been filed and will be considered during the 1981 session of the Massachusetts Legislature." (Emphasis added.)

This same letter was mailed on a second occasion prior to April 11, 1981. In this second mailing, a copy of the Charter adopted in 1979 was enclosed.

On April 11, 1981, the Democratic Party met in convention for the purpose of adopting a platform for the party. Following the convention, the Democratic State Committee published a document entitled "The Charter and Platform of the Democratic Party of the Commonwealth of Massachusetts." On July 27, 1981, this document was mailed by the Democratic State Committee and contained on its Table of Contents page the follwoing heading: "CHARTER OF THE DEMOCRATIC PARTY OF THE COMMONWEALTH OF MASSACHUSETTS*".

At the bottom of the page, the following note appeared: "*NOTE: Several sections of the Charter have yet to go into effect due to legislation pending in the Massachusetts General Court."

Contrary to the assertion of the appellee Democratic State Committee at page 13 of its Motion to Dismiss, the state party leadership was not uncertain about the legal effect of the "15 percent rule" because of legislation pending in the Massachusetts General Court during 1981. Instead, the state party leadership had sponsored legislation seeking to give legal effect to the "15 percent rule" because of its uncertainty.

In 1981, Representative Charles F. Flaherty, a member of the Democratic State Committee and its Chairman at the time of the Charter Commission's appointment, filed H. 3566, a bill seeking to

implement the provisions of Article Six, Section III of the Democratic Party Charter. Senator Gerard D'Amico, a Democratic Party member of the Massachusetts Senate, filed S. 390, of 1981, seeking to implement Article Six, Section III. No report of these bills has ever been made and no legislation implementing Article Six, Section III has ever been enacted. It is evident that for many years preceeding its 1982 Convention, the Democratic Party believed, as did appellant Langone, that the "15 percent rule" had no effect absent the passage of enabling legislation.

Nowhere in the Statement of Agreed Facts is there support for the apparent assertion of the appellee Democratic State Committee at pages 13-14 of its Motion to Dismiss that in light of this Court's decision in Democratic Party

of the United States v. LaFollette, 450 U.S. 107, 101 S. Ct. 1010 (1981), the Democratic State Committee made a group determination prior to May 25, 1982, that the "15 percent rule" could be implemented immediately. Instead, the Statement of Agreed Facts established only that if he were allowed to testify, Chester G. Atkins would testify that at a meeting of the Democratic State Committee on November 7, 1981, he stated his opinion that the case of Democratic Party of the United States v. LaFollette, supra, could make the "15 percent rule" effective without legislation. Similarly, the parties have agreed that if allowed, appellant Langone would testify that he was not notified of the November 7, 1981, meeting and was not informed of any opinion expressed by Mr. Atkins at said meeting.

On May 21-22, 1982, a convention of the state Democratic Party was held for the purpose of endorsing candidates for statewide office.[2]

On May 25, 1982, Chester G. Atkins wrote appellee Secretary Connolly, apparently on behalf of the appellee Democratic State Committee, and informed Secretary Connolly that pursuant to Article Six, Section III of the party's

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2. On May 21, 1982, an amendment was presented to the Endorsing Convention to delete Article Six, Section III of the party Charter. After debate it was defeated. Immediately thereafter, a second amendment, which would postpone the effective date of Article Six, Section III to January 1, 1983, was presented to the Endorsing Convention and defeated. Neither of these proposed amendments was specifically addressed to the "15 percent rule" but instead would have abolished the convention in the first instance or in the case of the second amendment, postponed the holding of the first endorsing convention until after January 1, 1983.

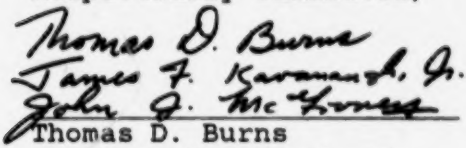
charter, four candidates for the nomination to Lieutenant Governor had received fifteen percent of the convention vote and were therefore eligible to run in the state primary election. Appellant Langone's name was not listed among the four. On May 26, 1982, appellant Langone received from the Office of the Massachusetts Secretary of State a letter signed by Marcia Molay, Director of Elections. Said letter stated that because of the May 25, 1982, letter from Atkins to Secretary Connolly, Secretary Connolly had decided not to place Langone's name on the Democratic state primary election ballot.

CONCLUSION

For the reasons stated above, the appellants respectfully request that the

Motion to Dismiss be denied.

Respectfully submitted,



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A. MAJOR PARTIES

§ 9-383. Time and place of convention

The time and place of meeting of a state or district convention shall be fixed by the state central committee or other authority of the party holding such convention, in accordance with the rules of such party; provided each such convention held to endorse candidates for state or district office to be voted upon at a state election shall be convened not earlier than the sixty-first day and closed not later than the forty-third day preceding the day of the primary for such office.

§ 9-384. Calls for conventions

Each convention shall originate by call of the chairman of the state central committee or other authority of the party holding such convention, in accordance with the rules of such party, which call shall be published, at least ninety days before such convention is to be held, in a newspaper or newspapers published and circulating within the state or within the district for which such convention is to be held, as the case may be.

§ 9-384a. Repealed. (1979, P.A. 79-363, § 37.)

The repealed section, which provided for calls for 1974 party conventions, was added by 1974, P.A. 74-25, § 11.

§ 9-385. Roll-call vote or polling by delegation at convention

Whenever one-fifth or more of the accredited delegates to, and present and voting at, any state or district convention, called for the purpose of choosing candidates for nomination for any elective office, upon motion, vote in favor of a roll call upon any matter or motion pending before such convention, or whenever a vote is to be taken on a party endorsement as between two or more candidates for nomination to any state or district office at any such convention, the clerk or secretary of such convention shall call such roll and shall keep a true record, in writing, of the vote of each delegate entitled to vote and voting at such convention or shall poll such convention by delegations if this procedure has been chosen by the convention pursuant to section 9-385a, and shall, at the conclusion of such roll call or call by delegations as the case may be, announce the result of such vote. Such clerk or secretary shall file such record at the headquarters of the state central committee, where it shall be preserved for a period of six months after the adjournment of such convention, and such record shall be open to public inspection at all reasonable times.

§ 9-385a. Voting by delegation at state convention

The delegates to the state convention of each party elected from each town shall select a chairman of such delegation and file the name and address of such chairman with the secretary of the state central committee of such party prior to the opening of such convention. Whenever one-fifth or more of the accredited delegates to, and present and voting at, any such state convention called for the purpose of choosing candidates for nomination for any elective office, upon motion, vote that a roll call vote, under section

9–385, upon any matter or motion pending before such convention, or on a party endorsement as between two or more candidates for nomination to any state office at any such convention, be taken by town delegation, the individual delegates shall be polled by the chairman of each town delegation whose designation is recorded as provided herein and their votes cast by totals by such chairman on the roll call. A list of the names and the vote of each delegate shall be filed by the said chairman of each town delegation with the clerk or secretary of the convention prior to the announcement of the result of such roll call vote and shall be preserved with the record of the vote as provided in section 9-385. A duplicate copy of such list shall be filed with the secretary of the state not later than forty-eight hours after the close of such convention. Upon announcement by the chairman of the vote of a town delegation, any delegate from such town may question or challenge such announcement, and thereupon, the vote of such town delegation shall be individually taken by the clerk or the secretary of such convention calling the roll, and each delegate shall announce his own vote. The provisions of this law shall not apply to district delegates, if any, and district delegates shall continue to vote individually on any roll call.

§ 9–386. Tie vote on endorsement

If a vote taken under sections 9–382 to 9–450, inclusive, on the selection of any party-endorsed candidate for state or district office results in a tie, such tie vote shall be dissolved in the manner prescribed in the applicable state or district rules of the party selecting such candidate; provided, if said party rules are silent or permit the tie vote to remain, a tie may be declared by the chairman or the presiding officer and there shall be no party endorsement. In such case of no party endorsement, statements may be filed under section 9–400, by or on behalf of any qualified person whose name appears upon the last-completed enrolment list of such party and who has received at least twenty per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the proposed endorsement of a candidate for such state or district office. In such event, if within the time specified in section 9–400, a candidacy for nomination to such state or district office is filed in conformity with the provisions of sections 9–400 to 9–414, inclusive, by not more than one person, no primary shall be held by such party for such office and the person filing such candidacy shall be deemed to have been lawfully chosen as the nominee of such party for such office; but if such candidacies are so filed by two or more persons, a primary shall be held as provided in section 9–415.

§ 9–388. [Filing of certificate of endorsement]

Whenever a convention of a political party is held for the endorsement of candidates for nomination to state or district office, each candidate endorsed at such convention shall file with the secretary of the state a certificate, signed by him, stating, that he was endorsed by such convention, his name and full residence address and the title and district, if applicable, of the office for which he was endorsed. Such certificate shall be attested by either (1) the chairman or presiding officer or (2) the secretary of such convention and shall be received by the secretary of the state not later than four o'clock p. m. on the fourteenth day after the close of such convention or if such fourteenth day is a Saturday, Sunday or legal holiday, not later than four o'clock p. m. on the next succeeding business day. If a certificate of a party's endorsement for a particular state or district office is not received

by the secretary of the state by such time, such party, for purposes of section 9-416 and section 2 of public act 81-447 shall be deemed to have made no endorsement of any candidate for such office. If applicable, the chairman of a party's state convention shall, forthwith upon the close of such convention, file with the secretary of the state the names and full residence addresses of persons selected by such convention as the nominees of such party for electors of president and vice president of the United States in accordance with the provisions of section 9-175.

§ 9-390. Selection of party-endorsed candidates

(a) Except as provided in subsection (g) of this section, party-endorsed candidates of any party in any municipality for municipal office shall be selected, in accordance with the rules of such party, by: (1) The enrolled members of such party in such municipality in caucus, (2) delegates to a convention chosen in accordance with such rules by such enrolled members or (3) the town committee of such party. The town chairman or his designee shall give notice in a newspaper having a general circulation in the town of the date, time, location and purpose of a caucus held pursuant to subdivision (1) of this subsection. Such notice shall be given not less than five days prior to the date set for the caucus; provided, if the rules of the party in any municipality require earlier notice, such party rules shall prevail.

(b) Except as provided in subsection (g) of this section, party-endorsed candidates of any party in any municipality for delegates to conventions shall be selected, in accordance with the rules of such party, by the method prescribed in either subdivision (1) or (3) of subsection (a) of this section.

(c) Except as provided in subsection (g) of this section, party-endorsed candidates of any party in any municipality for town committee members shall be selected, in accordance with the rules of such party, by the method prescribed in subdivision (1) of subsection (a) of this section.

(d) The selection of party-endorsed candidates in the manner provided in subsection (a), (b) or (c) of this section shall be made and certified to the clerk of the municipality within the time specified in section 9-391. Such certification shall contain the names and street addresses of the persons so endorsed, the title of the office or the position as committee member or delegate and the name or number of the political subdivision or district, if any, for which each such person is endorsed. In the case of endorsement of candidates for delegate to a convention, such certification may also contain the last name of a candidate, if any, selected by the endorsing authority for placement on the ballot label pursuant to section 9-437.

(e) In the endorsement of any person for an office or a position as delegate or committee member, in the manner provided in subsection (a), (b) or (c) of this section, for whom only the electors of a political subdivision of such municipality or of a senatorial district or assembly district located in such municipality may vote, only the enrolled party members, delegates or town committee members, as the case may be, from such political subdivision or district may participate, except that, in a municipality in which the town committee is elected at large and is the endorsing authority, such endorsement shall be made by the town committee as a whole and except that, whenever no member of the endorsing authority resides in such political subdivision or district from which the endorsement is to be made, then such endorsing authority as a whole shall endorse.

(f) Candidates endorsed in the manner provided in subsection (a), (b) or (c) of this section shall run in the primary of such party as party-endorsed candidates, except as provided in section 9-417.

(g) Any party in any municipality may by its rules provide that no selection be made of party-endorsed candidates for municipal office, town committee members or delegates to conventions and that the nominees of such party for such municipal office, town committee members or delegates to conventions of such party be chosen at direct primaries in accordance with the provisions of sections 9–405 to 9–407, inclusive, and sections 9–409 to 9–412, inclusive, except as provided in sections 9–418, 9–419 and 9–420.

(h) This section shall not apply to district delegates to conventions.

§ 9–390a. Repealed. (1978, P.A. 78–153, § 31, eff. Jan. 1, 1979.)

The repealed section, which related to election of town committee members in 1972, was derived from 1972, P.A. 3, § 1; 1972, P.A. 72–220, § 4.

§ 9–391. [Endorsements; time for and certification]

(a) Each endorsement of a candidate to run in a primary for the nomination of candidates for municipal office or for the election of town committee members or delegates to conventions shall be made under the provisions of section 9–390 not earlier than the forty-second day nor later than the fortieth day preceding the day of such primary and except as provided in subsection (b) of this section shall be certified to the clerk of the municipality by the chairman or presiding officer and the secretary of the town committee, caucus or convention, as the case may be, not later than the thirty-ninth day preceding the day of such primary except that when such thirty-ninth day is a Saturday, Sunday or legal holiday, such delivery shall be made not later than the next succeeding business day.

(b) In the case of such an endorsement for the municipal office of state senator or state representative, the candidate so endorsed shall file with the town clerk a certificate, signed by him, stating that he was so endorsed, his name and full residence address, and the title and district of the office for which he was endorsed. Such certificate shall be attested by either (1) the chairman or presiding officer, or (2) the secretary of the town committee, caucus or convention which made such endorsement, and shall be received by the town clerk not later than four o'clock p. m. on the fourteenth day after the close of such town committee meeting, caucus or convention. If such a certificate of a party's endorsement for the municipal office of state senator or state representative in a particular senatorial or assembly district is not received by the town clerk by such time, such party, for purposes of sections 9–417 and 9–418, shall be deemed to have neither made nor certified any endorsement of any candidate for such office in such district.

§ 9–392. Selection of town committees

A town committee shall be selected by each party in each town, in accordance with the provisions of sections 9–382 to 9–450, inclusive, not later than July 1, 1956, and thereafter at intervals not greater than twenty-six months. The terms of town committee members shall start on the first Monday following the date for the primary, unless otherwise provided in the party rules, except that the terms of all members shall begin and end on the same day; provided, when a town committee increases its membership as provided in section 9–393, the party rules shall specify

the day upon which the term of all the new positions created by such increase shall begin. (1963, P.A. 17, § 20.)

§ 9–393. Selection of town committee members and delegates

All town committee members and delegates to conventions shall be chosen as provided in sections 9–382 to 9–450, inclusive. Vacancies in town committees, arising from any cause including failure to elect, shall be filled in such manner as the rules of the party prescribe. The chairman of a town committee may be chosen by the town committee from within or without the membership of the town committee as the rules of the party prescribe. Any town committee may, by party rules adopted in accordance with section 9–375 and filed under section 9–374, increase its membership and fill new positions created by such increase in the manner prescribed in the applicable party rules. The rules of a party may provide methods for the filling of vacancies in delegations to conventions, which methods may include prescribing that each delegate elected in conformity with the provisions of sections 9–382 to 9–450, inclusive, may designate an alternate delegate or a proxy to act for him in his absence. (1963, P.A. 17, § 21; 1963, P.A. 130.)

§ 9–394. District delegates

If the state rules of a party provide that certain delegates to state or district conventions be chosen from districts of two or more towns or of parts of two towns, or of a town or towns and a part or parts of another town or other towns, the party-endorsed candidates for election as such district delegates shall be selected in such manner as is prescribed in such rules; provided such selection shall be made within the time specified in section 9–391; and provided, upon such selection, the information required in section 9–390 shall forthwith be certified, in such manner as is prescribed in such rules, to the clerk of each municipality in such district, and such certification shall be deemed the certification of the party in such municipality.

§ 9–394a. Senatorial and assembly district convention delegates

Any major party in any part of a town which is a component part of a senatorial or assembly district composed of parts of two towns or of a town or towns and a part or parts of another town or other towns may elect delegates to a senatorial or assembly district convention in such district as provided in this title and its party rules and may participate in the selection of a candidate for state senator or state representative in such district in the manner provided for a town which is a component part of a senatorial district in a district composed of two or more towns under this title. The name of each member of an

opposition slate of delegates from such part of a town and the name of each signer of a primary petition therefor under section 9–407 shall appear on the last-completed enrolment list of such party for such part of a town. In addition to other requirements prescribed by law, the name of a person on whose behalf a primary petition is filed for nomination to the office of state senator or state representative for such district and the names of the signers of any such petition shall appear on the last-completed enrolment list of such party for such part of a town or for any other town which is a component part of such district.

§ 9–395. Publication of information concerning municipal primaries

Forthwith upon the certification provided in sections 9–390 and 9–391, the clerk of the municipality shall publish, in a newspaper having a general circulation in such municipality, the fact of such certification and that a list of the persons endorsed as candidates is on file in his office and copies thereof are available for public distribution. If, with respect to any office or position to be filled, the clerk of the municipality has failed to receive the certification of the name of any person as a party-endorsed candidate within the time limited in section 9–391, such fact shall be published by the clerk of the municipality. Together with such information, the clerk shall publish a notice that a primary will be held for the nomination by such political party of a candidate for the offices to be filled or for the election of members of the town committee or delegates to a convention, as the case may be, if a candidacy is filed in accordance with the provisions of sections 9–382 to 9–450, inclusive. Such notice shall specify the final date for the filing of such candidacy and the date of the primary, shall state where forms for petitions may be obtained and shall generally indicate the method of procedure in the filing of such candidacy. The secretary of the state shall prescribe the form of such notice.

§ 9–396. Ballot vote at caucus; eligibility to vote

At any caucus of the enrolled members of any party in any municipality or in any voting district of any municipality, the chairman of such caucus shall, upon the receipt of a written motion from any person lawfully participating in such caucus calling for a vote by ballot upon such matter as such motion designates, submit such motion to a rising vote; and, if fifteen electors present and legally entitled to participate in such caucus vote in favor of such motion, the vote on the matter specified in such mo-

tion shall be by ballot. The presiding officer shall thereupon appoint two tellers; and, upon the written application of fifteen electors legally entitled to participate in such caucus, he shall appoint a teller from the persons whose names appear on such application. Before any ballot is deposited, the name of the elector offering to vote shall be given to the clerk or secretary of such caucus, and such name shall be checked on the enrolment list of such party. No person shall vote or participate or attempt to vote or participate in any caucus of a party in any voting district unless he is enrolled on the last-completed enrolment list of such party in such voting district; provided, if the party rules of such party provide for a joint caucus for two or more voting districts of a municipality, a person may vote in such joint caucus if the voting district in which he is enrolled is participating in such joint caucus. Any person who violates any provision of this section shall be fined not more than two hundred dollars or imprisoned not more than thirty days or both. (1963, P.A. 17, § 24.)

§ 9–397. Tie vote on endorsement

If a vote taken under sections 9–382 to 9–450, inclusive, on the selection of any party-endorsed candidate for municipal office or for delegate or town committee member results in a tie, such tie vote shall be dissolved in the manner prescribed in the applicable rules of the party selecting such candidate. (1963, P.A. 17, § 25.)

§ 9–398. Repealed. (1981, P.A. 81–447, § 22, eff. Jan. 1, 1982.)

§ 9–400. Filing of candidacies; state or district office

(a) Within fourteen days following the close of the state convention, a candidacy for nomination by a political party to a state office may be filed by or on behalf of any person whose name appears upon the last-completed enrolment list of such party in any municipality within the state and who has received at least twenty per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for such state office, whether or not the party-endorsed candidate for such office received a unanimous vote on the last ballot, by the filing with the secretary of the state, of a certificate, signed by such candidate and attested by either (1) the chairman or presiding officer, or (2) the secretary of the convention, that such candidate received at least twenty per cent of such votes, and that he consents to be a candidate in a primary of such party for such state office. Such certificate shall specify the candidate's name, his full residence address and the title of the office for which his candidacy is being filed. Except as provided in section 2 of public act 81-447, upon the expiration of the fourteen-day period, if one or more candidacies for such state office have been filed pursuant to the provisions of this section, the secretary of the state shall notify all town clerks in accordance with the provisions of section 9-433, that a primary for such state office shall be held in each municipality in accordance with the provisions of section 9–415.

(b) Within fourteen days following the close of the district convention, a candidacy for nomination by a political party to a district office may be filed by or on behalf of any person whose name appears upon the last-completed enrolment list of such party within any municipality or part of a municipality forming a component part of such district and who has received at least twenty per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for such district office, whether or not the party-endorsed candidate for such office received a unanimous vote on the last ballot, by the filing with the secretary of the state of a certificate, signed by such candidate and attested by either (1) the chairman or presiding officer, or (2) the secretary of the convention, that such candidate received at least twenty per cent of such votes, and that he consents to be a candidate in a primary of such party for such district office. Such certificate shall specify the candidate's name, his full residence address and the title and district of the office for which his candidacy is being filed. Except as provided in section 2 of public act 81-447, upon the expiration of the fourteen-day period, if one or more candidacies for such district office have been filed pursuant to the provisions of this section, the secretary of the state shall notify all town clerks within the district, in accordance with the provisions of section 9-433, that a primary for such district office shall be held in any municipality or each part of any municipality within the district in accordance with the provisions of section 9-415.

1-8-38. Primary Election Law; designation of candidates by convention.

A. State conventions of major political parties shall make convention designations of candidates for nomination to statewide office or office of United States representative on the primary election ballot.

B. No state convention for designating candidates shall be held later than sixty days preceding the primary election and delegates to such convention shall be elected according to state party rules.

C. The state convention shall take only one ballot upon candidates for each office to be filled. Every candidate receiving twenty percent or more of the votes of the duly elected delegates to the convention for the office to be voted upon at the ensuing primary election shall be certified to the secretary of state as the convention-designated nominee for that office. Such certification shall take place at least fifty-five days prior to the primary election.

D. The certificate of designation by state convention shall state the name of the office for which each person is a candidate, his name and address and the name of the political party which the candidate represents, and shall certify that the candidate has been a member of that political party for the period of time required by the Election Code [this chapter]. The certificate of designation shall indicate the order of the vote received at the convention by candidates for each office but no convention shall declare that any one candidate has received the nomination of the state convention.

1-8-39. Primary Election Law; failure to receive convention designation; alternate method of placing name on primary election ballot.

A. Anyone who has been certified by the secretary of state as a candidate for convention designation but does not receive at least twenty percent of the delegate vote may have his name printed on the primary election ballot as a candidate for that office provided that no later than fifty days before the primary election he shall file a declaration of candidacy and nominating petitions in the form prescribed by Section 1-8-30 NMSA 1978 containing:

(1) the signatures of voters totaling not less than one percent in each of ten counties with a total of three percent statewide of the total number of votes cast in the state by that party for governor in the last preceding primary election at which the party's candidate for governor was nominated in the case of a candidate for statewide office; or

(2) the signatures of voters totaling not less than one percent in each of five counties with a total of three percent districtwide of the total number of votes cast in the district by that party for governor in the last preceding primary election at which the party's candidate for governor was nominated, in the case of a candidate for United States representative.

B. The secretary of state shall determine whether the nominating petitions and signatures conform to the provisions of Subsection E of Section 1-8-30 NMSA 1978.

C. If such determinations are answered in the affirmative, the candidate shall have his name printed on the primary election ballot as a candidate for such office provided that his name shall be printed on the ballot immediately following the names of those persons who are convention-designated candidates for that office. If there are two or more candidates who qualify under the provisions of this section to have their names printed on the ballot for any one office, their respective positions shall be determined by lot.